

EXHIBIT 18

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5
6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION :
9 : MDL NO. 2804
10 APPLIES TO ALL CASES :
11 : CASE NO.
12 : 17-MD-2804
13 :
14 :

15 - HIGHLY CONFIDENTIAL -
16 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
17 VOLUME I

18 - - -

19 May 16, 2019

20 - - -

21 Videotaped deposition of
22 DR. SETH B. WHITELOW, taken pursuant to
23 notice, was held at the offices of Golkow
24 Litigation Services, One Liberty Place,
25 1650 Market Street, Philadelphia,
26 Pennsylvania beginning at 9:18 a.m., on
27 the above date, before Michelle L. Gray,
28 a Registered Professional Reporter,
29 Certified Shorthand Reporter, Certified
30 Realtime Reporter, and Notary Public.

31 - - -

32 GOLKOW LITIGATION SERVICES
33 877.370.3377 ph | 917.591.5672 fax
34 deps@golkow.com

1 the regulation, you'd agree that that
2 does not mean the order is for an
3 illegitimate purpose?

4 MR. BOGLE: Object to form.

5 THE WITNESS: I would say
6 that if an order is deemed
7 suspicious or you think it's
8 suspicious, it needs further
9 investigation to determine the
10 nature of that order, including
11 all of the above.

12 BY MR. EPPICH:

13 Q. And that's because the order
14 may not be for an illegitimate purpose.
15 You'd agree with me there?

16 MR. BOGLE: Objection.

17 Asked and answered.

18 THE WITNESS: It's a fairly
19 broad hypothetical, but yes, that
20 is a -- one of -- obviously there
21 are two possibilities here. It's
22 legitimate or illegitimate. There
23 are two possibilities. It could
24 be A or B. Yes.

1 BY MR. EPPICH:

2 Q. And simply because an order
3 meets the definition of suspicious under
4 the regulation, that does not mean the
5 order is going to be diverted, correct?

6 MR. BOGLE: Object to form.

7 THE WITNESS: Could you be
8 more specific? I mean...

9 BY MR. EPPICH:

10 Q. Well, my question is simply
11 an order that meets the definition of
12 suspicious under the regulation, that
13 fact alone doesn't mean that that order
14 will be diverted?

15 MR. BOGLE: Same objection.

16 THE WITNESS: Again, I think
17 it is a possibility, but also
18 there are multiple possibilities.
19 So, yes, I would agree with you,
20 you do need to do further
21 investigation to determine what is
22 in fact going on, which was, I
23 think, the point that I tried to
24 make throughout my report.

1 BY MR. EPPICH:

2 Q. And that's because the
3 investigation that you do could reveal
4 that is a legitimate explanation for why
5 a customer placed an order of unusual
6 size?

7 A. There could be a legitimate
8 explanation. There could be lots of
9 facts to take into account. Again, it's
10 fact driven. And as a result of being
11 fact driven, you need to do a thorough
12 due diligence and investigation program.
13 The problem is, is that I didn't see that
14 happening all that often.

15 Q. Well, there may be
16 legitimate explanations for why a
17 customer places an order that deviates
18 substantially from normal pattern,
19 correct?

20 MR. BOGLE: Object to form.

21 THE WITNESS: There could be
22 lots of reasons for that to
23 happen, both legitimate and
24 illegitimate. Again, we're back

1 to the same point being made, is,
2 you need to do -- you need to
3 thoroughly know your customer.
4 You need to thoroughly need to
5 know the background of your
6 customer, and you need to do an
7 investigation for anything in
8 flags in your system.

9 BY MR. EPPICH:

10 Q. And it's true that there may
11 be legitimate explanations for why a
12 customer places an order that deviates
13 its unusual frequent, correct?

14 A. Again, we're talking in
15 hypothetical terms. So hypothetically,
16 yes.

17 Q. Now, sir, you're not
18 offering any opinions in this case that a
19 particular order to a distributor, a
20 defendant in this case, was suspicious?

21 MR. BOGLE: Object to form.

22 THE WITNESS: Could you be
23 more specific. When you say I'm
24 not offering an opinion on

1 report.

2 MR. BOGLE: You can go to
3 your report.

4 THE WITNESS: I'm going to
5 go with my --

6 MS. SWIFT: I don't want to
7 know the definition that he has in
8 his report.

9 BY MS. SWIFT:

10 Q. What I would like to know is
11 if you can give a definition without
12 looking at your report. Yes or no?

13 A. I'm going to look at my
14 report.

15 Q. Okay.

16 A. I want to look at my report.

17 Q. That's fine. We'll move on.

18 A. Okay.

19 Q. You haven't done any
20 analysis of any order that Walgreens
21 shipped to one of its pharmacies to
22 determine whether that order led to drugs
23 being diverted, correct, sir?

24 A. Again, Counselor, I'm not

1 here to talk about whether or not there
2 was diversion. What I'm talking about is
3 you had a process into place. You didn't
4 follow -- you didn't follow your process
5 into place.

6 You had poor documentation
7 of the work that you did when you say you
8 did due diligence. There's poor work
9 that's there. And at the end of the day,
10 it's hard to know what the heck you did.
11 So I'm talking about the quality of your
12 program.

13 I'm not talking about
14 whether -- whether -- I'm not talking
15 about whether it led to diversion or not.
16 I'm just talking about you've got --
17 you've got a sloppy program.

18 Q. Did you do any analysis to
19 see how often a Walgreens store had an
20 order rejected by a Walgreens
21 distribution center and then went to an
22 outside distributor to fill that order?

23 MR. BOGLE: Object to form.

24 BY MS. SWIFT:

1 Q. Just yes or no, if you could
2 please.

3 MR. BOGLE: Answer how you
4 see fit.

5 THE WITNESS: Again, I've
6 got to go back and look at exactly
7 what I looked at, but...

8 BY MS. SWIFT:

9 Q. If you can't answer that
10 without looking at your report, we'll
11 move on. Turn to Page 206, please.

12 Actually, let's go ahead and
13 go to 208. We'll go back to that last
14 paragraph in the Walgreens section.

15 A. Sure.

16 Q. The one about the crucial
17 employees.

18 A. Mm-hmm.

19 Q. You wrote that it's your
20 understanding that Natasha Polster, Ed
21 Bratton and Rex Swords were the crucial
22 employees involved in shaping,
23 maintaining and operating Walgreens'
24 anti-diversion program, correct?

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16 VOLUME II

17 - - -

18 May 17, 2019

19 - - -

20 Continued videotaped
21 deposition of DR. SETH B. WHITELOW, taken
22 pursuant to notice, was held at the
23 offices of Golkow Litigation Services,
24 One Liberty Place, 1650 Market Street,
25 Philadelphia, Pennsylvania, beginning at
26 8:31 a.m., on the above date, before
27 Michelle L. Gray, a Registered
28 Professional Reporter, Certified
29 Shorthand Reporter, Certified Realtime
30 Reporter, and Notary Public.

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1 sir, is the outcome of that process.

2 I understand you believe
3 Cardinal Health's process for setting and
4 adjusting thresholds had flaws, correct?

5 A. Yes.

6 Q. Have you identified any
7 threshold for any Cardinal Health
8 customer that you believe was
9 inappropriately set --

10 A. Again --

11 MR. BOGLE: Just wait --

12 BY MS. WICHT:

13 Q. -- as a result of the
14 process flaws that you identified?

15 A. Again, outside the setting
16 of the actual number on whether it's
17 right or wrong, is outside of the scope
18 of what I was asked to look at.

19 Q. And you're not offering any
20 opinions as I understand it,
21 Dr. Whitelaw, that any particular
22 shipment of opioids by Cardinal Health
23 was, in fact, diverted, correct?

24 A. Again, my limit, the limits

1 that I was asked to do, was look at
2 process, and whether the process was
3 followed. I am not drawing any legal
4 conclusions. I am simply noting the
5 process flaws and issues with the
6 current -- with the process that I
7 observed.

8 Q. I don't think I'm asking you
9 about any legal conclusions. I'm asking
10 you whether, as a factual matter, there's
11 any shipment of opioids by Cardinal
12 Health that you are opining was, in fact,
13 diverted to illegitimate use.

14 A. Again, you know the scope of
15 the report. It was outside of the scope.
16 I was not looking at that. I was looking
17 at the process and whether the process
18 was being followed.

19 Q. Okay. Now, your report,
20 sir, lays out a variety of ways that you
21 believe Cardinal Health's anti-diversion
22 program was not effective, correct?

23 A. Yes.

24 Q. And I take it from the

1 testimony that you gave yesterday, that
2 you would agree with the premise that
3 there is no one correct way to run an
4 anti-diversion program, correct?

5 MR. BOGLE: Object to form.

6 THE WITNESS: I would agree
7 with the premise that any
8 anti-diversion program needs to be
9 tailored to the individual
10 company, which is consistent with
11 my experience as a compliance
12 expert and certainly fits with the
13 guidance that I have seen from the
14 DEA and others.

15 BY MS. WICHT:

16 Q. So anti-diversion systems or
17 practices, you would expect them to vary
18 from company to company, correct?

19 A. I would expect them to be
20 tailored appropriately to the -- from
21 company to company.

22 Q. And you would expect, even
23 the anti-diversion processes and systems
24 within one company to vary over time,